IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

(1) S.B. CIVIL WRIT PETITION NO. 291/2007
(Gur Tej Singh Vs. State of Rajasthan and Ors.)

(2) S.B. CIVIL WRIT PETITION NO. 292/2007
(Sucha Singh Vs. State of Rajasthan and Ors.)

(3) S.B. CIVIL WRIT PETITION NO. 293/2007
(Balraj Singh Vs. State of Rajasthan and Ors.)

(4) S.B. CIVIL WRIT PETITION NO. 295/2007
(Sukhmander Singh Vs. State of Rajasthan and Ors.)

(5) S.B. CIVIL WRIT PETITION NO. 296/2007
(Mahendra Kumar Vs. State of Rajasthan and Ors.)

(6) S.B. CIVIL WRIT PETITION NO. 297/2007
(Jasveer Kaur Vs. State of Rajasthan and Ors.)

(7) S.B. CIVIL WRIT PETITION NO. 299/2007
(Pritam Singh Vs. State of Rajasthan and Ors.)

Date of Order : 13/02/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. G.R. Goyal, for the petitioners.

BY THE COURT:-

By the instant writ petitions under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the order Annex.10 dated 03.08.2006 passed by the Commissioner, Primary Education Rajasthan, Bikaner placing the petitioners under suspension during contemplation of the

departmental enquiry against them.

I have heard learned counsel for the petitioner and gone through the order impugned Annexure-10 dated 3.8.2006.

It appears that the departmental enquiry has been contemplated and pending against the present petitioners. During the pendency of the departmental enquiry, the petitioners have been placed under suspension. Rule 22 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (for short 'the Rules of 1958' hereinafter) provides for an appeal against the order of suspension. Rule 22 provides that a Government Servant may appeal against an order of suspension to the authority to which the authority which made or is deemed to have made the order, is immediately subordinate.

Learned counsel for the petitioners submits that the alternative remedy is a no bar for maintainability of the writ petition. He has relied on the decision of the Hon'ble Supreme Court Noble Resources Ltd. Vs State of Orrisa & Anr. reported in 2006 AIR SCW 5408 wherein the Hon'ble Apex Court observed as under :-

> "It is trite that if an action on the part of the State is violative the equality clause contained in Article 14 of the Constitution of India, a writ petition would be maintainable even in the contractual field. A distinction indisputably must be made between a matter which is at the threshold of a contract and a breach of contract; whereas in the former the Court's scrutiny would be more intrusive, in the latter the Court may not ordinarily exercise its

> discretionary jurisdiction of judicial review, unless it is found to be violative of Art.14 of the Constitution. While exercising contractual powers also, the Government bodies may be subjected to judicial review in order to prevent arbitrariness or favouritism on its part. Indisputably, inherent limitations exist, but it would not be correct to opine that under no circumstances a writ will lie only because it involves a contractual matter."

Keeping in view the fact that the efficacious remedy of an appeal is available to the petitioners and without exhausting the remedy of the appeal, the petitioners have filed the instant writ petitions invoking extra-ordinary jurisdiction of this Court, in my view the decision relied on by the counsel for the petitioners has no application in the facts and circumstances of the case and is of no help to the petitioners, it was a contractual matter and there was no alternative remedy like an appeal.

In the circumstances, therefore, the writ petitions are dismissed on the ground of not availing alternative remedy. However, it is open for the petitioners to file appeal before the appropriate authority for challenging the order impugned.

No order as to costs.

(H.R.PANWAR),J.

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